

Message Text

SECRET

PAGE 01 USUN N 01601 01 OF 02 160020Z

60

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W

----- 096077

R 152232Z APR 76

FM USMISSION USUN NY

TO SECSTATE WASHDC 6928

INFO AMEMBASSY TEL AVIV

S E C R E T SECTION 1 OF 2 USUN 1601

EXDIS

FOR: T, L, NEA, D/LOS

FROM: USDEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: ISRAEL

REF: USUN 1496

1. ISRAELI AMB. NAJAR HANDED SIX-POINT AIDE-MEMOIRE TO AMB. LEARSON TODAY CONTAINED IN PARA2, WHICH WE AGREED TO CONSIDER. NAJAR SAID THE POINTS ON STRAITS AND THE RED SEA ARE COVERED BY US-ISRAEL UNDERSTANDINGS. NAJAR ACCOMPAINED BY ROSANNE, AND LEARSON BY OXMAN AND MINTER. COMMENTS FOLLOW TEXT.

2. BEGIN TEXT.

(1.) THE FACT THAT THE DRAFT S.N.T. PURPORTS TO DIFFERENTIATE BETWEEN A) STRAITS USED FOR INTERNATIONAL NAVIGATION JOINING ONE AREA OF HIGH SEAS TO ANOTHER AREA OF HIGH SEAS; AND B) STRAITS USED FOR INTERNATIONAL NAVIGATION JOINING ONE AREA OF HIGH SEAS WITH THE ECONOMIC ZONE OR TERRITORIAL AREA OF A FOREIGN STATE, CONTRADICTS THE PRINCIPLE OF EQUALITY OF REGIME OF ALL STRAITS USED FOR INTERNATIONAL NAVIGATION ESTABLISHED

SECRET

SECRET

PAGE 02 USUN N 01601 01 OF 02 160020Z

BY GENERAL INTERNATIONAL LAW AND EXPRESSED IN ARTICLE

16, PARAGRAPH 4, OF THE GENEVA CONVENTION ON THE
TERRITORIAL SEA AND CONTIGUOUS ZONE OF 1958.

OUR POSITION REMAINS THAT THIS ARTIFICIAL UNEQUALITY
MUST BE ELIMINATED.

(2). ALL THE MORE, IT IS EVIDENT THAT THE ATTEMPTS TO DELETE
ARTICLE 44, PARAGRAPHS 1(B) AND 2, WHICH RECOGNIZES A
REGIME OF NON-SUSPENDABLE INNOCENT PASSAGE FOR THE
STRAITS OF THE SECOND CATEGORY, MUST BE RESISTED FULLY.
THIS IS THE EXISTING LEGAL POSITION AND ANY WEAKENING
OF ARTICLE 44, WOULD MAKE THE NEW CONVENTION COMPLETELY
UNACCEPTABLE.

(3.) BEARING IN MIND CONDITIONS IN THE MEDITERRANEAN
SEA AND EVEN MORE IN THE RED SEA, IT IS VITAL TO GUARANTEE
A HIGH SEAS REGIME FOR FREEDOM OF NAVIGATION AND OVER-
FLIGHT IN THE CONOMIC ZONES, AND TO STRESS ITS NON-
DISCRIMINATORY CHARACTER. PRIORITY MUST BE RECOGNIZED
TO FREEDOM OF NAVIGATION IN RELATION TO THE RIGHTS OF
COASTAL STATES IN THE FIELDS OF POLLUTION AND
SCIENTIFIC RESEARCH. THIS ASPECT ALSO RELATES TO THE
THIRD COMMITTEE.

(4.) THE DEFINITION OF SEMI-ENCLOSED SEAS APPEARING
IN ARTICLE 133 IS TO BE MAINTAINED, AND SHOULD BE
COMPLETED BY A TEXT GUARANTEEING UNIMPEDED TRANSIT
PASSAGE BETWEEN SEMI-ENCLOSED SEAS AND HIGH SEAS UNDER
A NON-DISCRIMINATORY SYSTEM.

(5.) ARTICLE 136 OF PART II OF THE S.N.T. IS COMPLETELY
UNACCEPTABLE. IT PREJUDGES OF HYPOTHETICAL CLAIMS ON
THE RESOURCES OF THE ECONOMIC ZONES, BY STATES NOT YET
IN EXISTENCE, AGAINST EXISTING STATES.

THESE ARE QUESTIONS OF A HIGHLY POLITICAL CHARACTER
WHICH HAVE TO BE DEALT WITH IN A POLITICAL CONTEXT
ACCORDING TO THE PARTICULAR CIRCUMSTANCES OF EACH CASE.

PARAGRAPH 2 OF THAT ARTICLE INTENDS TO SUSPEND
SECRET

SECRET

PAGE 03 USUN N 01601 01 OF 02 160020Z

THE EXERCISE OF THE RIGHTS OF EXISTING STATES ON THEIR
ECONOMIC ZONES, IF THERE ARE ANY DISPUTES ON A SOV-
EREIGNTY RAISED BY NON-EXISTING STATES. IT IS A
VERY FAR REACHING PROPOSITION WHICH IS EVEN LESS
ACCEPTABLE THAN THE PREVIOUS ONE.

(6.9 ANY CLAIMS TO OPEN EXISTING OR NEW DISPUTES
SETTLEMENT MECHANISMS TO ACCESS BY INDIVIDUALS OR

NATIONAL LIBERATION MOVEMENTS WOULD BE UNACCEPTABLE. ON THE OTHER HAND, THIS NEED NOT PRECLUDE ACCESS BY GENUINELY INTERESTED NATURAL OR JURIDICAL COMMERCIAL BODIES TO THE DISPUTE SETTLEMENT MECHANISMS OF THE SEABED AUTHORITY. NEW YORK, 14 APRIL 1976. END TEXT.

3. POINTS 1 AND 2. NAJER SAID AGAIN THAT RETENTION OF ARTICLE 44(1) (B) AND (2) (TIRAN-AQABA) IS AN ABSOLUTE MINIMUM. HE DID NOT ASK US TO SPEAK ON POINT 1 - THE EQUALITY OF REGIMES FOR ALL STRAITS. HE IS CONCERNED ABOUT THE COORDINATED ARAB ATTACK ON 44 AND THE FACT THAT THE USSR, WHICH HAD ORIGINALLY PROPOSED THE SOLUTION CONTAINED IN 44, PUBLICLY SAID IT WOULD RECONSIDER IN LIGHT ARAB OPPOSITION. HE SAID THE US SHOULD USE ITS INFLUENCE WITH THE ARAB STATES. WHEN OXMAN SAID LATER THAT THE US RAISING THE ISSUE WITH THE ARABS COULD ESCALATE THE ISSUE NOW, AND WONDERED IF GOI HAD MADE A DECISION THAT THIS SHOULD BE DONE, NAJAR BACKED OFF.

4. POINT 3. THIS DOES NOT APPEAR TO RAISE ANY DIFFERENCES OF OBJECTIVE.

5. POINT 4. THIS RAISES A VERY SERIOUS PROBLEM BETWEEN US, AND USDEL BELIEVES A VERY SERIOUS MISTAKE FOR GOI. NAJAR IS OBVIOUSLY TRYING TO GET A SPECIAL RIGHT OF ACCESS FOR STATES BORDERING ENCLOSED AND SEMI-ENCLOSED SEAS, THEREBY COVERING THE GULF OF AQABA. USDEL STRONGLY OPPOSES ALL REFERENCE TO NAVIGATION IN CONNECTION WITH ARTICLES ON ENCLOSED AND SEMI-ENCLOSED SEAS, AND INDEED WOULD EVEN PREFER TO SEE THE WHOLE CHAPTER DELETED. THE PROBLEM IS THAT MOST RPT MOST STATES STRONGLY SUPPORTING US OBJECTIVE OF FREE TRANSIT OF STRAITS CONNECTING TWO PARTS OF HIGH SEAS FOR ALL SHIPS

SECRET

SECRET

PAGE 04 USUN N 01601 01 OF 02 160020Z

AND AIRCRAFT DO SO BECAUSE THEY BORDER ENCLOSED OR SEMI-ENCLOSED SEAS, EG. THE MEDITERRANEAN SEA AND PERSIAN GULF. IF THEY CAN ACHIEVE THEIR OBJECTIVES IN AN ARTICLE THAT GUARANTEES ACCESS FOR STATES BORDERING SUCH SEAS, THEIR INTEREST IN A STRAITS ARTICLE THAT MEETS US OBJECTIVES IS SHARPLY REDUCED. INDEED, AT THAT POINT MANY OF THEM MIGHT BE INTERESTED IN ARTICLES THAT RESTRICT TRANSIT BY STATES THAT DO NOT BORDER SUCH SEAS. WE MADE ABOVE POINTS TO NAJAR, AND BELIEVE DEPARTMENT AND EMBASSY SHOULD REPEAT THEM IF ISRAELIS PRESS THIS POINT. THIS IS NOT IN ISRAELI INTEREST, SINCE FREE TRANSIT OF GIBRALTAR FOR THE US IS CRITICAL TO THEM.

SECRET

NNN

SECRET

PAGE 01 USUN N 01601 02 OF 02 160030Z

60

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
----- 096384

R 152232Z APR 76
FM USMISSION USUN NY
TO SECSTATE WASHDC 6929
INFO AMEMBASSY TEL AVIV

S E C R E T SECTION 2 OF 2 USUN 1601

EXDIS

FOR: T, L, NEA, D/LOS

FROM: USDEL LOS

6. POINT 5. IT SEEMS CLEAR THAT MAIN BUT NOT EXCLUSIVE ISRAELI PROBLEM IS DIRECTED TO PARA 2 OF ARTICLE 136, WHICH USDEL AGREES IS A LEGAL MONSTROSITY. IT WAS DRAFTED BY ARGENTINA AND MEANT TO APPLY TO FALKLAND (MALVINAS) ISLANDS. USDEL NOTES THAT EFFECT OF ARTICLE 136 ON MIDDLE EAST SITUATION IS RAISED PARA 5 REFTEL, WHICH REQUESTS FURTHER POLICY GUIDANCE FROM DEPARTMENT ON 136. SOME OF THE PROBLEMS WITH 136 ARE ADDRESSED AT PP. 786-87 OF THE STEVENSON-OXMAN ARTICLE ON THE GENEVA LOS SESSION.

7. POINT 6. USDEL IS COMING TO SAME CONCLUSION AS GOI, NAMELY THAT IF WE CONTINUE TO PRESS FOR PRIVATE ACCESS (EXCEPT IN COMMITTEE I FOR SUITS AGAINST THE AUTHORITY BY MINERS AND OTHER TIGHTLY DEFINED CIRCUMSTANCES SUCH AS VESSEL RELEASE), THERE IS A HIGH RISK THAT THE ARABS WILL PRESS SUCCESSFULLY FOR ACCESS BY LIBERATION MOVEMENTS. OUR ASSUMPTION IS THAT THIS RESULT WOULD BE UNACCEPTABLE TO USG, BUT REQUEST CONFORMATION FROM DEPARTMENT. WE INFORMED PRIVATE SECTOR YESTERDAY THAT WE WERE RELUCTANTLY REACHING CONCLUSION THAT PRIVATE ACCESS (EXCEPT IN CI AND VESSEL RELEASE) WAS TOO DANGEROUS TO PRESS FOR BECAUSE OF LIBERATION

SECRET

SECRET

PAGE 02 USUN N 01601 02 OF 02 160030Z

MOVEMENT PROBLEM. OIL COMPANY REPS, WHO STILL BELIEVE
THEY MAY HAVE SOME SLIM CHANCE OF USING LOS TREATY TO
RAISE EXPROPRIATION SUITS, ARE DISAPPOINTED.
ENVIRONMENTALISTS - WHO WISH PRIVATE RIGHT TO SUE
STATES FOR FAILURE TO MEET CONSERVATION AND ENVIRONMENTAL
OBLIGATIONS - ARE VERY ANNOYED, HAVE BEGUN PRESSURING
US HERE, AND MAY DO SO IN WASHINGTON AS WELL. OUR
ASSESSMENT IS THAT THERE IS LITTLE CHANCE TO ACHIEVE BROAD
PRIVATE ACCESS ANYWAY IN LIGHT VIRULENT SOVIET AND OTHER
OPPOSITION TO PRIVATE SUITS AGAINST STATES.
SCRANTON

SECRET

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INNOCENT PASSAGE, TERRITORIAL WATERS, AIDE MEMOIRE, STRAITS
Control Number: n/a
Copy: SINGLE
Draft Date: 15 APR 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN01601
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760143-0965
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760455/aaaabvbl.tel
Line Count: 237
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: SECRET
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: EXDIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 10 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 MAY 2004 by woolflhd>; APPROVED <16 SEP 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: LOS: ISRAEL
TAGS: PLOS, EWWT, IS
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006